

(3) *Example.* Effective October 1, 1977, a plan is amended to change the accrual computation period from the 12-consecutive-month period beginning on January 1 to the 12-consecutive-month period beginning on October 1. The period from January 1, 1977 to September 30, 1977 must be treated as a partial accrual computation period. The plan has a requirement that a participant must be credited with 1,000 hours of service in an accrual computation period in order to be credited with a year of participation for purposes of benefit accrual. For the partial accrual computation period the plan may require a participant to be credited with 750 hours of service in the partial accrual computation period in order to receive credit for purposes of benefit accrual (1,000 hours of service multiplied by the ratio of 9 months to 12 months). To the extent permitted under paragraph (d) of this section, the plan may prorate accrual credit on whatever basis the plan uses to prorate accrual credit for employees whose service is 1,000 hours of service or more but less than service required for full accrual in a full accrual computation period.

§ 2530.204-3 Alternative computation methods for benefit accrual.

(a) *General.* Under section 204(b)(3)(A) of the Act and section 411(b)(3)(A) of the Code, a defined benefit pension plan may determine an employee's service for purposes of benefit accrual on the basis of accrual computation periods, as specified in § 2530.204-2, or on any other basis which is reasonable and consistent and which takes into account all covered service during the employee's participation in the plan which is included in a period of service required to be taken into account under section 202(b) of the Act and section 410(a)(5) of the Code. If, however, a plan determines an employee's service for purposes of benefit accrual on a basis other than computation periods, it must be possible to prove that, despite the fact that benefit accrual under the plan is not based on computation periods, the plan's provisions meet at least one of the three benefit accrual rules of section 204(b)(1) of the Act and section 411(b)(1) of the Code under all circumstances. Further, a

plan which does not provide for benefit accrual on the basis of computation periods may not disregard service under section 204(b)(3)(C) of the Act and section 411(b)(3)(C) of the Code.

(b) *Examples.* The following are examples of methods of determining an employee's period of service for purposes of benefit accrual under which an employee's period of service is not determined on the basis of computation periods but which may be used by a plan provided that the requirements of paragraph (a) of this section are met:

(1) *Career compensation.* A defined benefit formula based on a percentage of compensation earned in a participant's career or during participation, with no variance depending on hours completed in given periods.

(2) *Credited hours.* A defined benefit formula pursuant to which an employee is credited with a specified amount of accrual for each hour of service (or hour worked or regular time hour) completed by the employee during his or her career.

(3) *Elapsed time.* See § 2530.200b-9(e).

§ 2530.204-4 Deferral of benefit accrual.

For purposes of section 204(b)(1)(E) of the Act and section 411(b)(1)(E) of the Code (which permit deferral of benefit accrual until an employee has 2 continuous years of service), an employee shall be credited with a year of service for each computation period in which he or she completes 1,000 hours of service. The computation period shall be the eligibility computation period designated in accordance with § 2530.202-2.

Subpart C—Form and Payment of Benefits

§ 2530.205 [Reserved]

§ 2530.206 Time and order of issuance of domestic relations orders.

(a) *Scope.* This section implements section 1001 of the Pension Protection Act of 2006 by clarifying certain timing issues with respect to domestic relations orders and qualified domestic relations orders under the Employee Retirement Income Security Act of 1974, as amended (ERISA), 29 U.S.C. 1001 *et seq.* The examples herein illustrate the

application of this section in certain circumstances. This section also applies in circumstances not described in the examples.

(b) *Subsequent domestic relations orders.* (1) Subject to paragraph (d)(1) of this section, a domestic relations order shall not fail to be treated as a qualified domestic relations order solely because the order is issued after, or revises, another domestic relations order or qualified domestic relations order.

(2) The rule described in paragraph (b)(1) of this section is illustrated by the following examples:

Example (1). Subsequent domestic relations order between the same parties. Participant and Spouse divorce, and the administrator of Participant's 401(k) plan receives a domestic relations order. The administrator determines that the order is a QDRO. The QDRO allocates a portion of Participant's benefits to Spouse as the alternate payee. Subsequently, before benefit payments have commenced, Participant and Spouse seek and receive a second domestic relations order. The second order reduces the portion of Participant's benefits that Spouse was to receive under the QDRO. The second order does not fail to be treated as a QDRO solely because the second order is issued after, and reduces the prior assignment contained in, the first order. The result would be the same if the order were instead to increase the prior assignment contained in the first order.

Example (2). Subsequent domestic relations order between different parties. Participant and Spouse 1 divorce and the administrator of Participant's 401(k) plan receives a domestic relations order. The administrator determines that the order is a QDRO. The QDRO allocates a portion of Participant's benefits to Spouse 1 as the alternate payee. Participant marries Spouse 2, and then they divorce. Participant's 401(k) plan administrator subsequently receives a domestic relations order pertaining to Spouse 2. The order assigns to Spouse 2 a portion of Participant's 401(k) benefits not already allocated to Spouse 1. The second order does not fail to be a QDRO solely because the second order is issued after the plan administrator has determined that an earlier order pertaining to Spouse 1 is a QDRO.

(c) *Timing.* (1) Subject to paragraph (d)(1) of this section, a domestic relations order shall not fail to be treated as a qualified domestic relations order solely because of the time at which it is issued.

(2) The rule described in paragraph (c)(1) of this section is illustrated by the following examples:

Example (1). Orders issued after death. Participant and Spouse divorce, and the administrator of Participant's plan receives a domestic relations order, but the administrator finds the order deficient and determines that it is not a QDRO. Shortly thereafter, Participant dies while actively employed. A second domestic relations order correcting the defects in the first order is subsequently submitted to the plan. The second order does not fail to be treated as a QDRO solely because it is issued after the death of the Participant. The result would be the same even if no order had been issued before the Participant's death, in other words, the order issued after death were the only order.

Example (2). Orders issued after divorce. Participant and Spouse divorce. As a result, Spouse no longer meets the definition of "surviving spouse" under the terms of the plan. Subsequently, the plan administrator receives a domestic relations order requiring that Spouse be treated as the Participant's surviving spouse for purposes of receiving a death benefit payable under the terms of the plan only to a participant's surviving spouse. The order does not fail to be treated as a QDRO solely because, at the time it is issued, Spouse no longer meets the definition of a "surviving spouse" under the terms of the plan.

Example (3). Orders issued after annuity starting date. Participant retires and begins receipt of benefits in the form of a straight life annuity, equal to \$1,000 per month, and with respect to which Spouse has consented to the waiver of the surviving spousal rights provided under the plan and section 205 of ERISA. Subsequent to the commencement of benefits (in other words, subsequent to the annuity starting date as defined in section 205(h)(2) of ERISA and as further explained in 26 CFR 1.401(a)-20, Q&A-10(b)), Participant and Spouse divorce and present the plan with a domestic relations order requiring 50 percent (\$500) of Participant's future monthly annuity payments under the plan to be paid instead to Spouse, as an alternate payee (so that monthly payments of \$500 are to be made to Spouse during Participant's lifetime). Pursuant to paragraph (c)(1) of this section, the order does not fail to be a QDRO solely because it is issued after the annuity starting date. If the order instead had required payments to Spouse for the lifetime of Spouse, this would constitute a reannuitization with a new annuity starting date, rather than merely allocating to Spouse a part of the determined annuity payments due to Participant, so that the order, while not failing to be a QDRO because of the timing of the order, would fail to meet the requirements of section 206(d)(3)(D)(i) of ERISA (unless the plan otherwise permits such a change after the participant's annuity starting date). See 29 CFR 2530.206(d)(2), Example (4).

(d) *Requirements and protections.* (1) Any domestic relations order described in this section shall be a qualified domestic relations order only if the order satisfies the same requirements and protections that apply under section 206(d)(3) of ERISA.

(2) The rule described in paragraph (d)(1) of this section is illustrated by the following examples:

Example (1). Type or form of benefit. Participant and Spouse divorce, and their divorce decree provides that the parties will prepare a domestic relations order assigning 50 percent of Participant's benefits under a 401(k) plan to Spouse to be paid in monthly installments over a 10-year period. Shortly thereafter, Participant dies while actively employed. A domestic relations order consistent with the divorce decree is subsequently submitted to the 401(k) plan; however, the plan does not provide for 10-year installment payments of the type described in the order. Pursuant to paragraph (c)(1) of this section, the order does not fail to be treated as a QDRO solely because it is issued after the death of Participant, but the order would fail to be a QDRO under section 206(d)(3)(D)(i) and paragraph (d)(1) of this section because the order requires the plan to provide a type or form of benefit, or any option, not otherwise provided under the plan.

Example (2). Segregation of payable benefits. Participant and Spouse divorce, and the administrator of Participant's plan receives a domestic relations order under which Spouse would begin to receive benefits immediately if the order is determined to be a QDRO. The plan administrator separately accounts for the amounts covered by the domestic relations order as is required under section 206(d)(3)(H)(v) of ERISA. The plan administrator finds the order deficient and determines that it is not a QDRO. Subsequently, after the expiration of the segregation period pertaining to that order, the plan administrator receives a second domestic relations order relating to the same parties under which Spouse would begin to receive benefits immediately if the second order is determined to be a QDRO. Notwithstanding the expiration of the first segregation period, the amounts covered by the second order must be separately accounted for by the plan administrator for an 18-month period, in accordance with section 206(d)(3)(H) of ERISA and paragraph (d)(1) of this section.

Example (3). Previously assigned benefits. Participant and Spouse 1 divorce, and the administrator of Participant's 401(k) plan receives a domestic relations order. The administrator determines that the order is a QDRO. The QDRO assigns a portion of Participant's benefits to Spouse 1 as the alter-

nate payee. Participant marries Spouse 2, and then they divorce. Participant's 401(k) plan administrator subsequently receives a domestic relations order pertaining to Spouse 2. The order assigns to Spouse 2 a portion of Participant's 401(k) benefits already assigned to Spouse 1. The second order does not fail to be treated as a QDRO solely because the second order is issued after the plan administrator has determined that an earlier order pertaining to Spouse 1 is a QDRO. The second order, however, would fail to be a QDRO under section 206(d)(3)(D)(iii) and paragraph (d)(1) of this section because it assigns to Spouse 2 all or a portion of Participant's benefits that are already assigned to Spouse 1 by the prior QDRO.

Example (4). Type or form of benefit. Participant retires and commences benefit payments in the form of a straight life annuity based on the life of Participant, with respect to which Spouse consents to the waiver of the surviving spousal rights provided under the plan and section 205 of ERISA. Participant and Spouse divorce after the annuity starting date and present the plan with a domestic relations order that eliminates the straight life annuity based on Participant's life and provides for Spouse, as alternate payee, to receive all future benefits in the form of a straight life annuity based on the life of Spouse. The plan does not allow reannuitization with a new annuity starting date, as defined in section 205(h)(2) of ERISA (and as further explained in 26 CFR 1.401(a)-20, Q&A-10(b)). Pursuant to paragraph (c)(1) of this section, the order does not fail to be a QDRO solely because it is issued after the annuity starting date, but the order would fail to be a QDRO under section 206(d)(3)(D)(i) and paragraph (d)(1) of this section because the order requires the plan to provide a type or form of benefit, or any option, not otherwise provided under the plan. However, the order would not fail to be a QDRO under section 206(d)(3)(D)(i) and paragraph (d)(1) of this section if instead it were to require all of Participant's future payments under the plan to be paid instead to Spouse, as an alternate payee (so that payments that would otherwise be paid to the Participant during the Participant's lifetime are instead to be made to the Spouse during the Participant's lifetime).

[75 FR 32850, June 10, 2010]